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Legislative Notice

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S. 4 — Legislative Line Item Veto Act of 1995

Calendar No. 26

Reported from the Budget Committee on February 27, 1995, amended, without recommendation, by a vote of 12-10 (all Democrats voting no, all Republicans voting yes), with additional and minority views, S. Rept. 104-9; and from the Senate Governmental Affairs Committee on March 7, 1995, without recommendation, by voice vote, with additional views, S. Rept. 104-13.

NOTEWORTHY

- At press time, it was expected the Senate would turn to a legislative line item veto bill today. S. 4 is the likely vehicle; however, a leadership substitute is expected to be offered on the floor. A Legislative Notice Update will be issued once this substitute is available.
- S. 4 amends the Congressional Budget and Impoundment Control Act of 1974 to grant the President enhanced power to rescind (cancel) spending in regular, supplemental and continuing-funding appropriations bills, and direct spending (entitlement). Rescissions would remain in effect unless Congress passed a disapproval resolution and, if necessary, overrode a Presidential veto by the usual two-thirds margin in both Houses.
- The President must dedicate to deficit reduction all rescission savings resulting from actions taken under S. 4's procedures (the "lockbox" provision).
- The House passed its version of S. 4 (H.R. 2), on February 6, 1995, by a vote of 294-134.
- Since 1989, the Senate has voted five times on efforts to waive the Budget Act to allow floor consideration of legislation similar to S. 4; all five efforts have failed. Because the legislation has been reported from the Senate Budget Committee, no waiver is required for S. 4.
- The Administration has expressed support for S. 4 and for the House-passed bill, H.R. 2.

HIGHLIGHTS

- Under the process provided under S. 4, known as "enhanced rescission authority," Presidents would have up to 20 calendar days (excluding Saturdays, Sundays, and holidays) to send a rescission message to Congress after the date of enactment of an appropriations bill. The rescission would be deemed to have taken effect upon submission of the message to Congress.
- The President shall submit a separate rescission message for each appropriations bill.
- The President could also send a rescission request when he submits his budget proposal to Congress. Again, the rescission would be deemed to have taken effect. (Rescissions in this message would be limited to those not previously proposed for that fiscal year.)
- Rescission messages whose 20-day time limit has not been reached when Congress adjourns sine die will be deemed to be retransmitted when Congress reconvenes, and the rescission would not take effect until retransmittal.
- S. 4 would deem rescinded funds permanently canceled. However, a rescission could be overturned under the following time-line:
 - ▶ Congress would have 20 calendar days of session to pass a "rescission disapproval" bill;
 - ▶ The President would have 10 days (excluding Sundays) to sign or veto the "rescission disapproval" bill;
 - ▶ Congress would have five calendar days of session after a veto to override it.
- If Congress fails to override a Presidential veto of its disapproval bill, then:
 - ▶ for discretionary spending, the President must reduce the discretionary spending limits for that fiscal year, and any outyears, affected by the rescission; and the House and Senate Budget committees must also reduce allocation and spending levels to reflect the rescission;
 - ▶ for mandatory spending, the President must reduce balances for the budget year and each outyear.

This section is known as the "lockbox" provision, and is a change from current practice. With spending levels reduced, the rescinded funds can not be assigned to other programs by the Congress. Therefore, the deficit would be reduced.
- Rescission procedures in the Senate would be:
 - ▶ Any rescission disapproval bill will be referred to the appropriate committee;
 - ▶ Floor debate shall be limited to 10 hours, including debatable motions and appeals, with the time equally divided by the majority and minority leader or their designees;

- ▶ Debate on any debatable motion or appeal would be limited to one hour, equally divided between proponents and opponents; time can be yielded off the bill for debate as well;
 - ▶ A motion to further limit debate would not be debatable, and no motions to recommit would be in order, except those to recommit to the appropriate committee with instructions to report back in a day or less to the Senate;
 - ▶ No amendments to a rescission disapproval bill would be in order, nor can the Senate consider other rescission disapproval bills, unless the Senate waives these restrictions by a three-fifths vote of those duly chosen and sworn.
- The bill sunsets on September 30, 2002.

BACKGROUND

Legislative Versus Executive Powers

The struggle between the legislative and executive branches to control the disbursement of funds appropriated by Congress has been underway since 1803 when President Thomas Jefferson refused to spend \$50,000 Congress enacted for Mississippi River gunboat operations. In short, the struggle has been grounded in two different interpretations of the Constitution taken by the two branches.

The legislative branch, staking its claim to supremacy based on its power of the purse, insists on its ability to authorize, appropriate, and see funds spent. However, as expenditure of funds is an executive responsibility, the presidency has insisted on some discretion in how, or if, funds are spent, taking "care that the laws be faithfully executed." (Article II, section 3).

As the Federal government grew in size and complexity throughout the 20th century, Presidents moved actively to impound spending, from time to time sparking a Congressional response —either restoration of impounded funds, or removal of the discretion of certain officials to actually impound monies — if the legislative branch believed the executive branch had gone too far.

Congress Lays Down the Law

However, the late 1960s and early 1970s saw aggressive activities in the impoundment area by two presidents, Lyndon Johnson and Richard Nixon. Together, their actions brought about the most comprehensive legislative response yet to address the question of the powers of each branch when it came to spending decisions.

With passage of the Congressional Budget and Impoundment Control Act (CBICA) in 1974, Congress limited the discretion of the executive branch to impound expenditures. Instead, the law gave Presidents two different tools to address spending. First, a president may attempt to defer spending; Congress can disapprove of such deferrals, and the spending then goes ahead.

The President may also request to rescind, or permanently cancel, spending. Unless Congress acts affirmatively on that request during 45 calendar days, the President must expend the funds.

Rescission Record

According to the General Accounting Office, between July 12, 1974, when CBICA was signed into law, and October 7, 1994, presidents have sent Congress 1,084 rescission requests, totalling \$72.8 billion. Congress has adopted merely 399, for a total of \$22.9 billion. GAO also reports that over the 20 years, Congress itself initiated 649 rescissions totalling \$70.1 billion; altogether, Congress has enacted 1,048 rescissions, totalling \$92.9 billion.

S. 4 Alters the Legislative-Executive Equation

In the context of large federal deficits, energy has grown behind the idea to increase the ability of the President to target spending deemed wasteful, duplicative, or no longer needed as one tool to try and control spending. Proponents make no claim that such increased power would, by itself, get deficit spending under control; instead, they argue that the President's arsenal is deprived of a necessary weapon.

S. 4 would greatly enhance the ability of the President to rescind expenditures. S. 4 gives the President up to 20 days after enactment of an appropriations bill to rescind, in whole or part, any spending, and the rescission is effective unless Congress passes a disapproval bill and, if necessary, overrides the President's veto of the disapproval bill within 35 days. In effect, it would require two-thirds of the Congress present and voting to force the disbursement of funds targeted by the President.

The second key feature of S. 4 requires the President to designate savings from a successful rescission to deficit reduction, by granting him the authority to reduce discretionary spending caps, and requiring Congress to adjust appropriate allocations to reflect that rescission. This is called the "lockbox" provision.

COST

CBO's report to the both reporting committees on S. 4 identifies no costs to the government upon enactment. CBO believes, though, that "potential savings or costs [to the government] are likely to be relatively small," because discretionary spending is only one-third of the budget "and is already tightly controlled;" and, while the bill allows rescissions of entitlement spending, it has no effect on the underlying laws which authorize the entitlement and create the formulae by which they are funded. S. 4, by itself, doesn't affect direct spending or receipts, hence does not require pay-as-you-go scoring. Finally, S. 4 would have an undetermined impact on the budgets of state and local governments.

REGULATORY IMPACT

The Budget Committee concludes, in sum, that S. 4 "could have a regulatory or paperwork impact only to the extent that its process authorizes the President to rescind budget authority that resulted in such a regulatory or paperwork impact." Governmental Affairs noted that any additional paperwork requirements would be modest.

ADMINISTRATION POSITION

At a joint hearing of the House Committee on Government Reform and Oversight and the Senate Committee on Governmental Affairs on January 12, 1995, Dr. Alice Rivlin, director of OMB, testified on behalf of the Clinton Administration, and expressed support for S. 4 and for H.R. 2, the House-passed bill.

OTHER VIEWS

Budget Committee

Senator Domenici

In the Committee chairman's additional views, he states that he will not support the bill absent major modifications. He does not support S. 4 because it "will delegate too much authority to the President over the control of the budget," and if Congress does so, it will never be able to retrieve it.

Senator Domenici also identifies two hurdles to overcome a presidential rescission: first, that Congress must vote on the whole presidential package, but S. 4 doesn't even require that the appropriate Committee report out the legislation, and the motion to proceed in the Senate is fully debatable; second, it would require a two-thirds majority of the Congress to override the President's veto. In essence, Senator Domenici argues, S. 4 makes "the President's rescissions effective with no action required by Congress."

Senator Domenici also believes the limited control Congress has now over defense and foreign policy through its power of the purse would be lost under S. 4, again because the President could make rescission decisions that stand, unless Congress surmounts the two major hurdles.

Instead, Senator Domenici supports S. 14, which requires the Congress to vote within 10 days on rescissions proposed by the President. The rescissions would only take effect if the President signed the legislation into law. This would make Congress accountable to the American people, but preserve the Congressional prerogative to make spending decisions and the concept of majority rule.

Senator Domenici also argues that S. 4 goes well beyond the impoundment power previously exercised by Presidents, by allowing him to permanently cancel any funding.

Senator Domenici concludes by stating that S. 4 is not a true line-item veto, and one can be granted to the President only by constitutional amendment. He supports agreeing "on an approach that gets a bill on the President's desk and signed into law without unduly disrupting [the] delicate balance of powers."

Senator Exon

The Senator, in his minority views, believes that S. 4 "is dogmatic, imprecise, and inadequate for the task at hand." He also criticizes the supermajority requirement, pointing to the fact that S. 4 "could unwittingly create a tyranny by the *Minority*. The Senate certainly does not need any further cause for gridlock" (emphasis in original). He supports an approach that requires a simple majority of Congress to affirm the President's proposed rescission.

He also critiques the fact that S. 4 contains no provision to tackle tax expenditures: he believes that not allowing the President to target tax expenditures "shirks responsibility on this critical component of deficit reduction."

Finally, Senator Exon lists a long series of "holes and loose ends" in S. 4 which he believes makes the bill "terribly flawed, inexact, and ineffective."

Senator Boxer

The Senator, in her minority views, opposes S. 4, believing it unduly shifts power from the Legislative to the Executive branch. She believes it will "undermine our constitutional balance of powers." She says the enhanced rescission power awarded to the President "could be used for political retribution or for political reward. For instance, will a State that traditionally votes Democratic see more of its programs in a Republican President's rescissions request? Will a state that is traditionally Republican face an overwhelming number of cuts under a Democratic President?"

Senator Murray

In her minority views, she says she believes S. 4 "will achieve little to put this country's fiscal house in order." She states that line-item veto power to the governor of Washington state occasioned much "horse-trading" in the State legislature, where she served. The bill, she believes, will not in and of itself reduce the deficit, but would "turn over more power to the White House." Also, various amendments "which would have gone a long way to improve [this bill were] voted down — largely on party lines — in this Committee."

Governmental Affairs Committee

Additional Views of Senators Glenn, Nunn, Levin, Pryor, and Akaka

The Senators argue that S. 4 "would result in a massive shift of power to the Executive Branch." They complain that such a shift should be thoughtfully and carefully considered, but

that the committee majority adopted a "no-amendment-in-committee" approach. They argue the bill is not a true line-item veto, and that it suffers from several procedural defects. They argue that the CBO concluded that State governors use their line-item veto power to push their own priorities, contrary to their purpose of S.4, to attack wasteful or pork-barrel spending. They complain that an amendment to give the President enhanced rescission authority only over unauthorized spending was not adopted, nor could perceived problems over definition of budget authority, or entitlement and non-appropriated entitlement spending be worked out with majority staff.

POSSIBLE AMENDMENTS

Leadership substitute.

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